

Message Text

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SUBJECT: AUSTRALIAN AIDE-MEMOIRE PROTESTING U.S. COUNTERVAILING
DUTIES ON BUTTER

REF: (A) CANBERRA 5783; (B) STATE 200492; (C) STATE 202014

1. SUMMARY: REFTEL (A) CONTAINS TEXT OF GOA AIDE-MEMOIRE
PRESENTED EMBASSY 28 AUGUST PROTESTING PROPOSED U.S.
COUNTERVAILING DUTIES ON 1973 AUSTRALIAN BUTTER SHIPMENT.
THIS TEL CONTAINS DETAILS OF AUSTRALIAN PRESENTATION
AND EMBASSY COMMENTS. WHILE REITERATING PREVIOUSLY
EXPRESSED VIEW (REF B) THAT AUSTRALIAN EQUALIZATION
SCHEME IS NOT SUBSIDY, GOA INTRODUCED APPARENTLY NEW
CONTENTION THAT PROPOSED U.S. ACTION IS DISCRIMINATORY
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AND VIOLATIVE OF GATT ARTICLE I BECAUSE AUSTRALIAN SYSTEM

PARALLELS THOSE USED BY OTHER MAJOR EXPORTERS OF DAIRY PRODUCTS TO U.S., WHILE NONE OF LATTER SUBJECT TO COUNTERVAILING DUTIES. GOA ALSO CONTENDS LANGUAGE OF GATT VI, XVI, ADVI AND ADXVI SPECIFICALLY NEGOTIATED IN 1947 AND IN 1954 REVIEW SESSION WITH EXPLICIT UNDERSTANDING BY U.S. AND AUSTRALIAN PARTICIPANTS THAT CONSCIOUS PURPOSE WAS TO ESTABLISH AUSTRALIAN SCHEME NOT SUBSIDY AND THEREBY PROTECT INTEGRITY OF 1947 BUTTER CONCESSION NEGOTIATED BY U.S. WITH AUSTRALIA. GIVEN ITS STRONG VIEW THAT U.S. ACTION TO APPLY COUNTERVAILING DUTIES TO AUSTRALIAN SCHEME WOULD VIOLATE GATT AND INCIDENTAL FACTS (1) THAT 1947 U.S. BUTTER CONCESSION EFFECTIVELY VOIDED BY SUBSEQUENT U.S. SECTION 22 WAIVER, (2) THAT 1973 BUTTER SHIPMENTS MADE IN RESPONSE U.S. INVITATION TO MEET SEVERE U.S. SHORTAGES, GOA HAS LITTLE INTEREST IN NEGOTIATING PRICE DATA DESIGNED TO REDUCE SIZE OF PENALTY U.S. IMPOSES AND APPARENTLY WISHES MEET ISSUE OF PRINCIPLE HEAD-ON. END SUMMARY.

2. GOA CASE PRESENTED BY FOGARTY, FIRST ASSISTANT SECRETARY, INTERNATIONAL TRADE ORGANISATIONS, DEPARTMENT OF OVERSEAS TRADE, SUPPORTED BY THREE OFFICERS REPRESENTING OVERSEAS TRADE AND AGRICULTURE DEPARTMENTS. FOGARTY INDICATED GOA WISHED, BY CALLING IN EMBASSY SUPPLEMENTING LENGTHY PREVIOUS WASHINGTON DISCUSSIONS, TO UNDERLINE THE SERIOUSNESS OF GOA CONCERN OVER PROPOSED U.S. ACTION AND FORMALLY NOTIFY U.S. OF GOA INTENTION TO INVOKE GATT PROCEDURES UNLESS U.S. ABLE TO DEFER ACTION FOR SUFFICIENT TIME TO PERMIT FORMAL CONSULTATIONS. AS PART OF BACKGROUND, FOGARTY INDICATED GOA DEEPLY DISAPPOINTED OVER HISTORY OF TREATMENT OF ITS DAIRY PRODUCTS EXPORTS TO U.S., MENTIONING ORIGINAL 1947 TARIFF QUOTA CONCESSION NEGOTIATED WITH AUSTRALIA, SUBSEQUENT AUSTRALIAN ACQUIESCENCE IN SECTION 22 WAIVER, NEGLIGIBLE QUOTA ACCORDED AUSTRALIA UNDER SECTION 22 ARRANGEMENTS, NOW CULMINATING IN PROPOSAL TO PUT COUNTERVAILING DUTIES ON SHIPMENT INVITED BY U.S. AT TIME OF 1973 SHORTAGES.

3. PENDING RECEIPT OF PREVIOUS CORRESPONDENCE LISTED PARA 4 REF (C), EMBASSY CANNOT BE ABSOLUTELY CERTAIN LIMITED OFFICIAL USE

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WHETHER ANY POINTS IN GOA AIDE-MEMOIRE ARE NEW. BASED ON REF (B) HOWEVER, IT APPEARS AUSTRALIAN CHARGE THAT PROPOSED U.S. ACTION IS DISCRIMINATORY AND VIOLATES GATT ARTICLE I IS NEW ELEMENT IN AUSTRALIAN BRIEF. LIKewise, FOGARTY'S DESCRIPTION OF CIRCUMSTANCES OF NEGOTIATING HISTORY ON ARTICLE VI AND XVI AND INTER- PRETATIVE NOTES THERETO IS MORE DETAILED AND RELATES THIS LANGUAGE MORE EXPLICITLY AND DIRECTLY TO THE

U.S. BUTTER CONCESSION AND THE AUSTRALIAN
EQUALIZATION SCHEME THAN NECESSARILY APPEARS FROM
REF (B).

4. ON THE ISSUE OF DISCRIMINATION, THE AUSTRALIAN SIDE,
WHILE DECLINING TO CITE SPECIFIC COUNTRIES, CONTENDS
THAT NUMEROUS MAJOR EXPORTERS OF DAIRY PRODUCTS TO THE
U.S. USE EQUIVALENT EQUALIZATION SYSTEMS AND THAT SINCE
COUNTERVAILING DUTIES NEVER APPLIED TO SUCH EXPORTERS
ANY APPLICATION TO AUSTRALIA DISCRIMINATORY, QUITE ASIDE
FROM LARGER ISSUE OF WHETHER AUSTRALIAN SYSTEM INVOLVES
BOUNTY. IN THIS CONNECTION, MOREOVER, GOA EMPHASIZES
U.S. NOT PROTECTED BY PROTOCOL OR PROVISIONAL APPLICATION,
SINCE PROTOCOL DOES NOT EXEMPT EXISTING LEGISLATION FOR
PURPOSES GATT PART I.

5. ON ISSUE OF NEGOTIATING HISTORY, AUSTRALIANS CONTEND
LANGUAGE ARTICLE VI(7) AND ADARTICLE XVI KNOWINGLY AGREED
BY U.S. AND GOA NEGOTIATORS VARIOUSLY IN 1947 AND 1954
SPECIVICALLY TO ESTABLISH THAT AUSTRALIAN SCHEME DIE
NOT INVOLVE EXPORT SUBSIDY SUBJECTING IT TO COUNTERVAILING
DUTIES AND THIS IN TURN WAS MUTUALLY UNDERSTOOD TO BE FOR
SPECIFIC PURPOSE OF PROTECTING VALUE TO AUSTRALIA OF 1947
BUTTER CONCESSION NEGOTIATED BY U.S.

6. FINALLY, FOGARTY ALLUDED TO DISCRETION IN HANDS OF
SECRETARY OF TREASURY, AND THAT AUSTRALIA UNDERSTOOD SUCH
DISCRETION WAS EXERCISED IN REFRAINING FROM IMPOSING
COUNTERVAILING DUTIES ON DAIRY PRODUCTS EXPORTS FROM
WESTERN EUROPE. GOA DEEPLY HOPES U.S. WILL UTILIZE SAME
DISCRETION ON BEHALF OF AUSTRALIA WHICH BELIEVES IT IS
OTHERWISE BEING SINGLED OUT IN THIS MATTER.

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7. EMBASSY COMMENT: EMBASSY IS IN NO POSITION TO ASSESS
ACCURACY OF AUSTRALIAN CONTENTIONS (1) RE NEGOTIATING
HISTORY OF GATT ARTICLES VI AND XVI, (2) RE EXISTENCE
OR LACK OF PARALLEL BETWEEN AUSTRALIAN DAIRY EQUALIZATION
ARRANGEMENTS AND THOSE OF OTHER MAJOR EXPORTERS TO U.S.,
OR (3) THAT MAJOR WESTERN EUROPEAN DAIRY PRODUCT EXPORTERS
RECENTLY RECEIVED TOLERANT TREATMENT CONTRASTING WITH RIGID
POLICY BEING APPLIED TO AUSTRALIA. AT SAME TIME, WE ARE
IMPRESSED BY OBVIOUS DEPTH OF AUSTRALIAN CONVICTION
RESPECTING NEGOTIATING HISTORY. BECAUSE AUSTRALIANS
PRESENT THIS AS QUESTION OF HISTORICAL FACT RATHER THAN
CURRENT INTERPRETATION, WE BELIEVE IT SHOULD BE HANDLED
WITH CARE AS A QUESTION OF FACT. MOREOVER, CONSIDERING
THE SPECIAL CIRCUMSTANCES OF THE ONE-TIME 1973 SHIPMENT,
AT A TIME OF SHORTAGE, AND THE FACT THAT FOR THE PRESENT

AND FORESEEABLE FUTURE AUSTRALIAN BUTTER EXPORTS ARE
NEGLECTIBLE DUE TO THE ACTION OF SECTION 22, THERE WOULD
APPEAR MERIT IN EXERCISING ANY DISCRETION IN FACT
AVAILABLE IN FAVOR OF AUSTRALIA AT A TIME WHEN WE HAVE
NUMEROUS MUTUAL TRADE ISSUES OF EQUAL OR GREATER CURRENT
AND POTENTIAL IMPORTANCE. THESE INCLUDE THE BEEF ISSUE,
WHERE AUSTRALIA FACES A MAJOR DOMESTIC DISASTER, THE MTN,
AND AUSTRALIA'S FLIRTATION WITH RENEWED PROTECTION,
THE FINAL OUTCOME OF WHICH IS STILL IN DOUBT. GIVEN THE
SERIOUS WEIGHT THE GOA HAS NOW GIVEN TO THIS ISSUE, IT
WOULD SEEM DESIRABLE AS A MINIMUM TO POSTPONE THE
IMPOSITION OF COUNTERVAILING DUTIES AND ACCOMMODATE
AUSTRALIA'S FORMAL REQUEST FOR PRIOR FORMAL CONSULTATIONS.
THERE APPEARS LITTLE BENEFIT TO BE GAINED AFTER ALL THIS
TIME BY PROCEEDING IMMEDIATELY WITH COUNTERVAILING DUTIES
IN THE FACE OF SUCH A REQUEST, ESPECIALLY IN VIEW OF
AUSTRALIA'S INTENT IN SUCH AN EVENT TO PROCEED UNDER GATT
XXII. AT THE SAME TIME, THE COST OF IMMEDIATE ACTION
IN TERMS OF OUR RELATIONS ON ECONOMIC ISSUES SEEMS
SUBSTANTIALLY GREATER.
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